

KRG1M-00030

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

DELORIS HULL)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:20-cv-02870
)	
THE SEMBLER CO. AND)	
THE KROGER CO.)	
)	
Defendants.)	JURY DEMANDED

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446, Defendants, The Kroger Company, an improperly named defendant (hereinafter “Kroger”) hereby files this Notice of Removal removing this case from the Circuit Court of Shelby County, Tennessee, Case No. CT-0273-20, where it is currently pending, to the United States District Court for the Western District of Tennessee. This cause is removable pursuant to 28 U.S.C. § 1332, in that Plaintiff’s claims invoke the Court’s diversity jurisdiction and the amount in controversy exceeds the statutorily required \$75,000.00. In support of removal, Kroger respectfully submits as follows:

INTRODUCTION

1. Defendant, The Kroger Company is a for-profit corporation with its principal place of business located at 1014 Vine Street, Cincinnati, Ohio 45202. The Kroger Company does not own the property at issue and is not the appropriately named defendant. Kroger Limited Partnership I is a limited partnership with its principal place of business located at 1014 Vine Street, Cincinnati, Ohio 45202. Kroger Limited Partnership I owns the property at issue and is the appropriate named defendant.

2. Plaintiff, Deloris Hull is a citizen and resident of Shelby County, Tennessee.

3. Defendant, The Sembler Co., is a foreign, for-profit corporation with its principal place of business located at 5858 Central Ave., St. Petersburg, FL 33707-1720.

4. Plaintiff's complaint seeks damages in excess of Seventy-Five Thousand Dollars (\$75,000).

5. The United States District Court for the Western District of Tennessee is the federal judicial district embracing the Circuit Court of Shelby County, Tennessee, where this suit was originally filed. Venue is therefore proper under 28 U.S.C. §§ 81(b)(1) and 1441(a).

6. Pursuant to 28 U.S.C. § 1332, this civil action is removable as it invokes the federal court's diversity jurisdiction. This Court therefore has subject matter jurisdiction over this civil action, and removal is proper.

PROCEDURAL HISTORY

7. Deloris Hull ("Plaintiff") instituted this civil action in the Circuit Court of Shelby County, Tennessee, on January 21, 2020, arising out of injuries allegedly sustained in Shelby County, Tennessee, on or about January 22, 2019. A true and correct copy of all process and pleadings as served upon Kroger is attached hereto as Exhibit "A" and is incorporated herein by reference.

8. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be filed with the Shelby County Circuit Court, and written notice will be provided to Plaintiff along with a copy of this pleading.

9. Counsel for Kroger conferred with counsel for co-defendant, The Sembler Co., on November 24, 2020, and Co-Defendant consents to removal to federal court.

REMOVAL IS TIMELY FILED UNDER 28 U.S.C. § 1446(b)

10. “The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.” 28 U.S.C. § 1446.

11. Kroger was served with the summons in this action via Private Process Service on November 4, 2020. As such, pursuant to 28 U.S.C. § 1446(b), this notice of removal is timely filed since it is filed on or before December 4, 2020.

NON-WAIVER OF DEFENSES

12. By removing this action from Shelby County Circuit Court, Kroger does not waive any defenses available to them.

13. By removing this action from Shelby County Circuit Court, Kroger does not admit any of the allegations in Plaintiff’s complaint.

WHEREFORE, PREMISES CONSIDERED, Kroger, by and through its counsel, desiring to remove this civil action to the United States District Court for the Western District of Tennessee, being the district and division for the county in which such civil action is pending, pray that the filing of this Notice of Removal, the giving of written notice thereof to Plaintiff, and the filing of a copy of this Notice of Removal with the clerk of the Circuit Court of Shelby County, Tennessee, shall effect the removal of said civil action to this Honorable Court. Kroger demands a jury to try the issues.

Respectfully submitted this 30th day of November, 2020.

**LEWIS, THOMASON, KING, KRIEG
& WALDROP, P.C.**

By: s/Christopher L. Vescovo
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2020, a copy of the foregoing pleading has been delivered to all parties at interest in this cause via electronic mail, ECF, and/or by placing a copy of same in the United States mail, postage prepaid, in a properly addressed envelope, or by delivering same to each party or party's attorney as follows:

<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> EFS <input checked="" type="checkbox"/> E-mail	David A. Stowers (27564) 1661 International Drive, Suite 400 Memphis, TN 38120 (901) 300-8212 dstowers@wpglawfirm.com <i>Attorney for Plaintiff</i>	<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> EFS <input checked="" type="checkbox"/> E-mail	Daryl A. Gray (27781) 201 St. Charles Ave., Suite 3206 New Orleans, LA 70170 (504) 500-0000 daryl@wpglawfirm.com <i>Attorney for Plaintiff</i>
<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> EFS <input checked="" type="checkbox"/> E-mail	Brian King (36392) 1331 Union Ave., Suite 1152 Memphis, TN 38104 (901) 440-4444 bking@kinginjuryfirm.com <i>Attorney for Plaintiff</i>	<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> EFS <input checked="" type="checkbox"/> E-mail	Joe Broy Law Offices of Scott C. Campbell 6750 Poplar, Suite 601 Germantown, TN 38138 (901) 356-5976 jbroy@travelers.com <i>Attorney for The Sembler Co.</i>

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